

Remarks

On October 2, 2009, the Applicants timely filed an RCE submission after an adjudication by the Board of Appeals. In the October 2, 2009 RCE submission, the applicants presented secondary considerations evidencing the non-obviousness of applicants' claimed mobile transfilling method. After this RCE submission was filed, the applicants subsequently realized that a third entity was copying their claimed invention. Accordingly, the applicants are hereby submitting a Supplementary Amendment to present this additional secondary consideration for the examiner's review.

The examiner is respectfully requested to consider all of the secondary considerations presented in the October 2, 2009 RCE submission as evidence of the invention's patentability *i.e.* Long Felt But Unsatisfied Need in the Prior Art Recognized by Others; Inoperability of the Prior Art; Licensing; Replacement in the Industry of the Prior Art Methods by the Present Invention and Commercial Success. (**Attachments 1-4; Exhibits 1-9** evidencing these secondary considerations were previously submitted)

Copying of the Invention

The examiner is further respectfully urged to consider additional evidence of non-obviousness that came to the applicants' attention after the filing of the RCE submission, namely copying of the claimed invention by a third party. (**Attachment 5; Exhibits 10-14C** currently being submitted.) Pursuant to the MPEP, another form of secondary evidence which may be presented by applicants during prosecution of an application is evidence that competitors in the marketplace are copying the invention instead of using the prior art. MPEP §716.06

On March 13, 2009, a Mr. Kenneth E. Alexander, Vice President of Quality & Regulatory Activities, Louisiana Hospital Association, approached Cryovation LLC, a manufacturer of the applicants' mobile transfilling units. See **Attachment 5** – Declaration of applicant John Melvin and **Exhibit 10** – true and correct copy of email correspondence sent by Kenneth Alexander to Cryovation, LLC.

In his email, Kenneth Alexander indicated that he was with the Louisiana Hospital Association and that he was eager to learn more about the applicants' mobile transfilling method:

I am with the Louisiana Hospital Association and am working with the state of Louisiana on a comprehensive oxygen delivery plan for the state to use during disasters (mostly hurricane season). I would like more information on your products and their capabilities and how it might fit into our statewide plan of supporting evacuation, sheltering, and community oxygen distribution. Please contact me at the above contact info. My request is fairly time sensitive, so prompt response would be most welcome and appreciated.

Many thanks,
Ken Alexander

Exhibit 10

Kenneth Alexander's email simply exemplifies a long-felt but unsatisfied need in the prior art. As discussed in the previous RCE submission, one of the problems in the prior art was that in times of emergency situations, such as hurricanes, ground-based re-filling stations often became flooded and/or lost power and thus became inoperable. In such scenarios, medical equipment supply companies, who needed re-filling of their canisters so that they could subsequently deliver them to home patients, were faced with a critical dilemma because they were unable to rely on the ground-based refilling stations. Kenneth Alexander's email evidences that the state of Louisiana realized this dilemma and was reaching out to applicants' mobile transfilling method as a solution to this prior art problem.

Thereafter, Kenneth Alexander exchanged several other emails with Cryovation via a Mr.

Ryan Boyd, associated with Cryovation. Ryan Boyd subsequently forwarded Kenneth Alexander's contact information to John Melvin, applicant. **Exhibit 11** are true and correct copies of said emails.

Afterwards, in March and April of 2009, Kenneth Alexander and John Melvin engaged in a series of telephone and email correspondence, whereby John Melvin offered the Louisiana Hospital Association and the State of Louisiana a license to practice his mobile transfilling method. Pursuant to this end, John Melvin explained the design and construction of his mobile transfilling method to Kenneth Alexander, and furthermore provided photographs of the mobile transfilling units. In addition, John Melvin also provided Kenneth Alexander contact information on his current licensees, in the event Kenneth Alexander wanted to correspond with them or ask them any questions. See **Exhibit 12** – true and correct copy of an email sent by John Melvin to Kenneth Alexander providing the above-discussed information and photographs.

Thereafter, on April 16, 2009, John Melvin sent an email to Kenneth Alexander, inquiring whether he had any remaining questions or if there was anything he could do on his part to further illuminate how the mobile process worked. Kenneth Alexander responded, indicating he was still interested in applicants' method, yet hadn't had the opportunity to discuss the issues on his end. After this point, John Melvin did not hear from Kenneth Alexander again. See **Exhibit 13** – true and correct copy of said emails.

Subsequently, in October of 2009, John Melvin discovered that the Parish of Ascension, as well as the state of Louisiana, had adopted a mobile transfilling procedure as claimed in independent claim 1. See, **Exhibit 14A**, **Exhibit 14B** and **Exhibit 14C** – true and correct copies of three website articles evidencing the same.

During times of emergency, such as after a hurricane or major power outage, the mobile oxygen unit will be deployed to a pre-determined location with Ascension Parish. Residents will bring their own personal oxygen tanks...and have their tanks refilled at no charge.

Exhibit 14A – website article

“This system is a godsend,” said Dr. Bernard Brach of St. Elizabeth’s Hospital. “It represents a unit that will take the pressure off physicians when it comes to patients’ needs.”

Exhibit 14C – website article

Thus, evidence of copying by the Parish of Ascension, as well as the State of Louisiana, is a significant secondary consideration that the examiner should take into account, along with the other secondary considerations, as evidence of the non-obviousness of the mobile transfilling method.

Conclusion

In summary, the examiner is respectfully requested to consider *all* the rebuttal arguments and evidence presented by applicants, to reconsider his decision, and to issue a Notice of Allowability. If the examiner believes a telephone conference will expedite the disposition of this matter, the examiner is respectfully invited to contact this attorney at the number shown below.

Dated: 10/26/09

Respectfully submitted:

Sophia D. Alurkar

Sophia D. Alurkar
Reg. No. 25,8833
ROY, KIESEL, KEEGAN & DENICOLA
2355 Drusilla Lane
Baton Rouge, LA 70895
(225) 927-9908

**IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE**

APPLICANT: John Melvin, et al. TITLE: Mobile Transfilling System
SERIAL NO.: 10/711,787 ART UNIT: 3751
FILING DATE: 10/05/04 EXAMINER: Maust, Timothy Lewis
DOCKET NO.: 10, 607.001

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**37 CFR 1.132 DECLARATION OF JOHN MELVIN WITH REGARD TO THE
COPYING OF THE INVENTION**

I, JOHN MELVIN, of full age and majority, residing at 104 Connie Drive, Gulfport, MS, 39503, do hereby declare as follows:

1. I am one of the co-applicants in the above captioned application for the mobile transfilling method.
2. In 2004, my partner Ken Carver and I formed C&M Oxyfill, LLC and began to introduce our mobile transfilling method into the market.
3. In March of 2009, Cryovation LLC, a manufacturer of our mobile transfilling units, was approached by a Mr. Kenneth Alexander, Vice President of Quality & Regulatory Activities, Louisiana Hospital Association.
4. Exhibit 10 is a true and correct copy of email correspondence sent by Kenneth Alexander to Cryovation, in which Kenneth Alexander indicates that he is interested in learning more about our mobile transfilling method.

ATTACHMENT 5

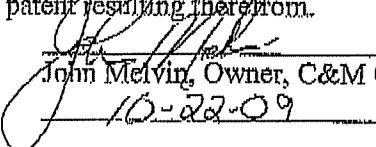
5. Thereafter, Kenneth Alexander exchanged various emails with a Mr. Ryan Boyd, who is associated with Cryovation. Ryan Boyd subsequently forwarded Kenneth Alexander's contact information via email to me.
6. **Exhibit 11** are true and correct copies of the emails referred to in paragraph 5.
7. Subsequently, in March and April of 2009, Kenneth Alexander and I engaged in a series of telephone and email correspondence, whereby I offered the State of Louisiana and the Louisiana Hospital Association a license to practice my mobile transfilling method.
8. Pursuant to this end, I explained the design and construction of my mobile transfilling method to Kenneth Alexander, and furthermore provided photographs of our mobile transfilling units.
9. I also provided Kenneth Alexander the contact information on our current licensees, in the event Kenneth Alexander wanted to correspond with them or ask them any questions.
10. **Exhibit 12** is a true and correct copy of an email I sent to Kenneth Alexander providing the above-discussed information and photographs, referred to in paragraphs 8-9.
11. Thereafter, on April 16, 2009, I sent an email to Kenneth Alexander, inquiring whether he had any remaining questions or if there was anything I could do on my part to further illuminate how our mobile process worked. Mr. Alexander responded via email to my inquiry, indicating he was still interested in our method, yet hadn't had the opportunity to discuss the issues on his end.
12. **Exhibit 13** are true and correct copies of the emails referred to in paragraph 11.
13. On October 15, 2009, I accessed the following three sites:

<http://www.ascensionparish.net/downloads/pio/082809pt.pdf>
<http://www.weeklycitizen.com/news/x1566714822/Ascension-first-in-state-with-oxygen-trailer>
<http://www.wafb.com/Global/story.asp?S=11011155>
14. Pursuant to three articles that I printed from these sites, I learned that the Parish of Ascension, as well as the State of Louisiana, has adopted a mobile transfilling procedure as claimed in independent claim 1 of our application.

ATTACHMENT 5

15. Exhibits 14A, 14B, and 14C are true and correct copies of the articles referred to in paragraph 14.

John McIvin states that the facts set forth in this declaration are true; that all statements made herein of his own knowledge are true and that statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code, and that such willful, false statements may jeopardize the validity of the application or any patent resulting therefrom.


John McIvin, Owner, C&M Oxyfill, LLC

10-22-09

Date

ATTACHMENT 5

-----Original Message-----

From: www@cryovation.com [mailto:www@cryovation.com]
Sent: Friday, March 13, 2009 2:53 PM
To: info@cryovation.com
Subject: Message from Website Contact Us Page

Ken Alexander (kalexander@lhaonline.org) just sent the message:

I am with the Louisiana Hospital Association and am working with the state of Louisiana on a comprehensive oxygen delivery plan for the state to use during disasters (mostly hurricane season). I would like more information on your products and their capabilities and how it might fit into our statewide plan of supporting evacuation, sheltering, and community oxygen distribution. Please contact me at the above contact info. My request is fairly time sensitive, so prompt response would be most welcome and appreciated.

Many thanks,

Ken Alexander

Vice President of Quality & Regulatory Activities Louisiana Hospital Association

225-928-0026

EXHIBIT

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-----Original Message-----

From: Ryan Boyd [mailto:ryan.boyd@cryovation.com]
Sent: Wednesday, March 18, 2009 9:17 AM
To: jemelvin@cableone.net
Subject: Lead from CryoVation

Here is Ken's contact info

-----Original Message-----

From: Kenneth Alexander [mailto:kalexander@lhaonline.org]
Sent: Tuesday, March 17, 2009 6:07 PM
To: Ryan Boyd
Subject: RE: Message from Website Contact Us Page

Ryan,

I believe I missed you today. Thanks for the call and email. My cell number is 225-505-1115 as an alternate contact for you.

Talk to you soon,

Ken

Kenneth E. Alexander, MS, RRT

Vice President of Quality & Regulatory Activities Louisiana Hospital Association

Office: 225-928-0026

"Try not to become a man of success, but rather, try to become a man of value." Albert Einstein

-----Original Message-----

From: Ryan Boyd [mailto:ryan.boyd@cryovation.com]
Sent: Tuesday, March 17, 2009 12:50 PM
To: Kenneth Alexander
Subject: RE: Message from Website Contact Us Page

Ken,

Please give me a call to discuss this project. 239-337-1114

Thanks

Ryan Boyd

CryoVation

239-337-1114

www.cryovation.com

cell: 239-896-7237

EXHIBIT

tables

From: John Melvin [mailto:jmelvin@cableone.net]
Sent: Thursday, March 19, 2009 5:31 PM
To: 'kalexander@lhaonline.org'
Subject: Mobile oxygen transfilling

Ken, I've attached some pictures of both the trailer and box truck designs of Oxygen Transfilling equipment.

The below companies are already doing business in Louisiana on a mobile basis and I think would be happy to help you with your needs:

Southern Louisiana: Quick Fill, Inc. – contact Tim Ditmore, cell 228 323-2308

Northern Louisiana: H & C Oxygen, Inc. – contact Jason Radcliff, cell 601 624-4703

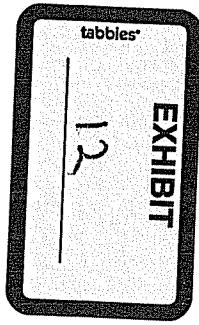
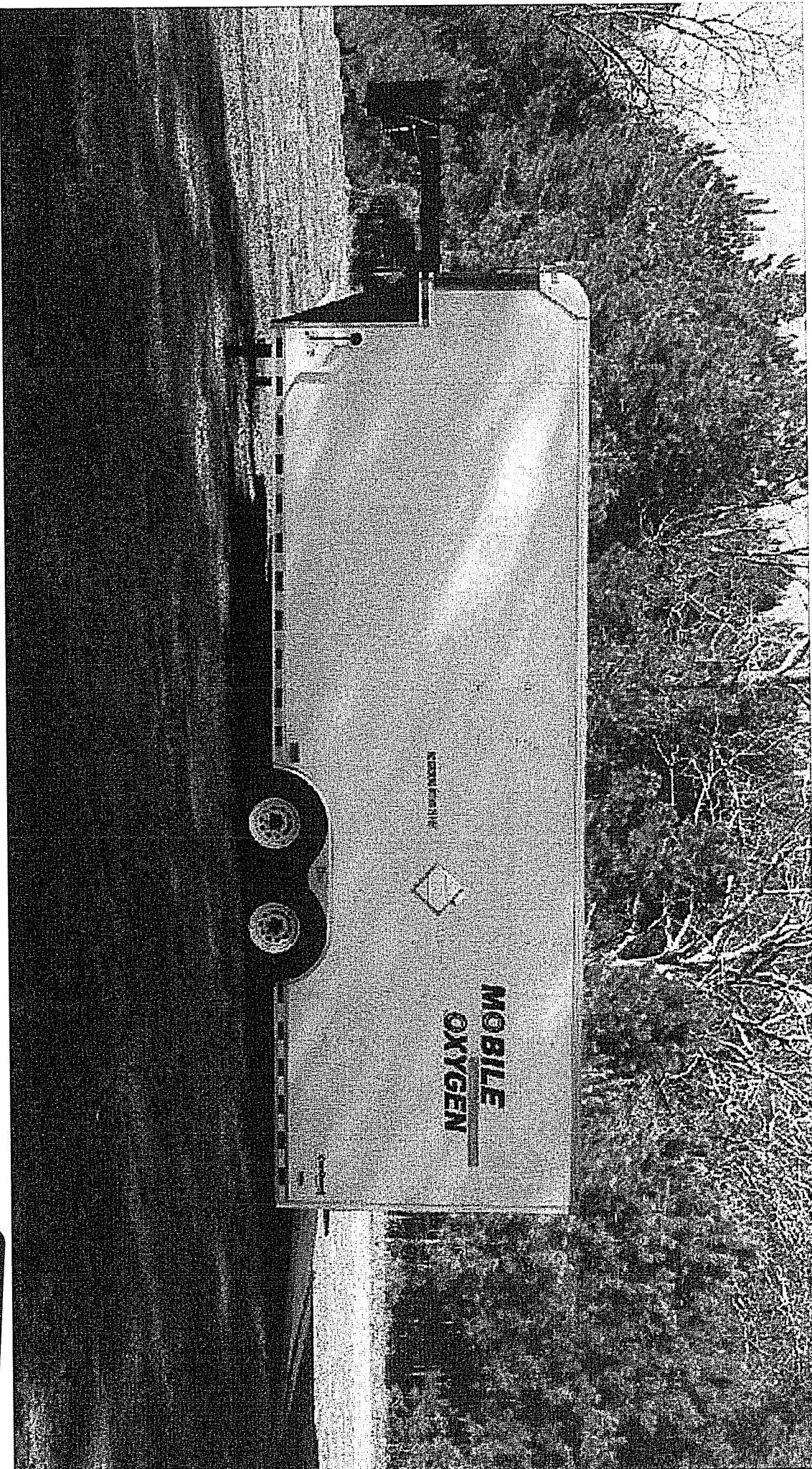
In the pictures, the ones starting with DCP are of a trailer mounted unit while those starting PB are of a box truck. Just for info the generator is not stored inside the trailer, it was only there for photo purposes.

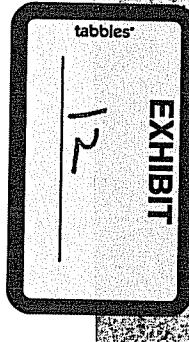
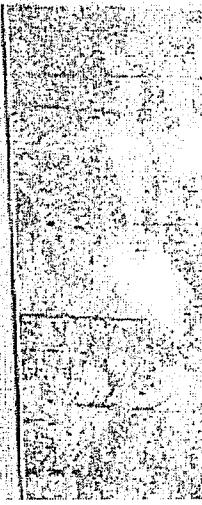
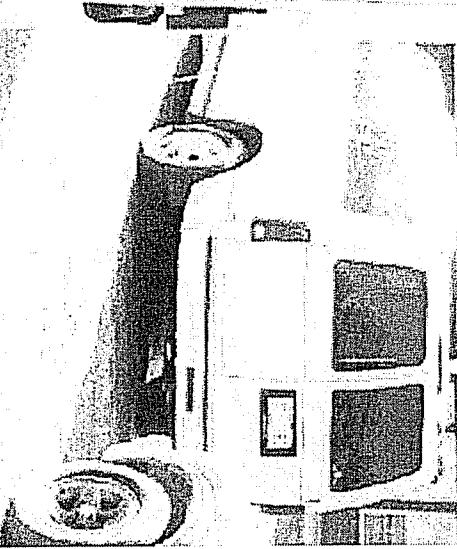
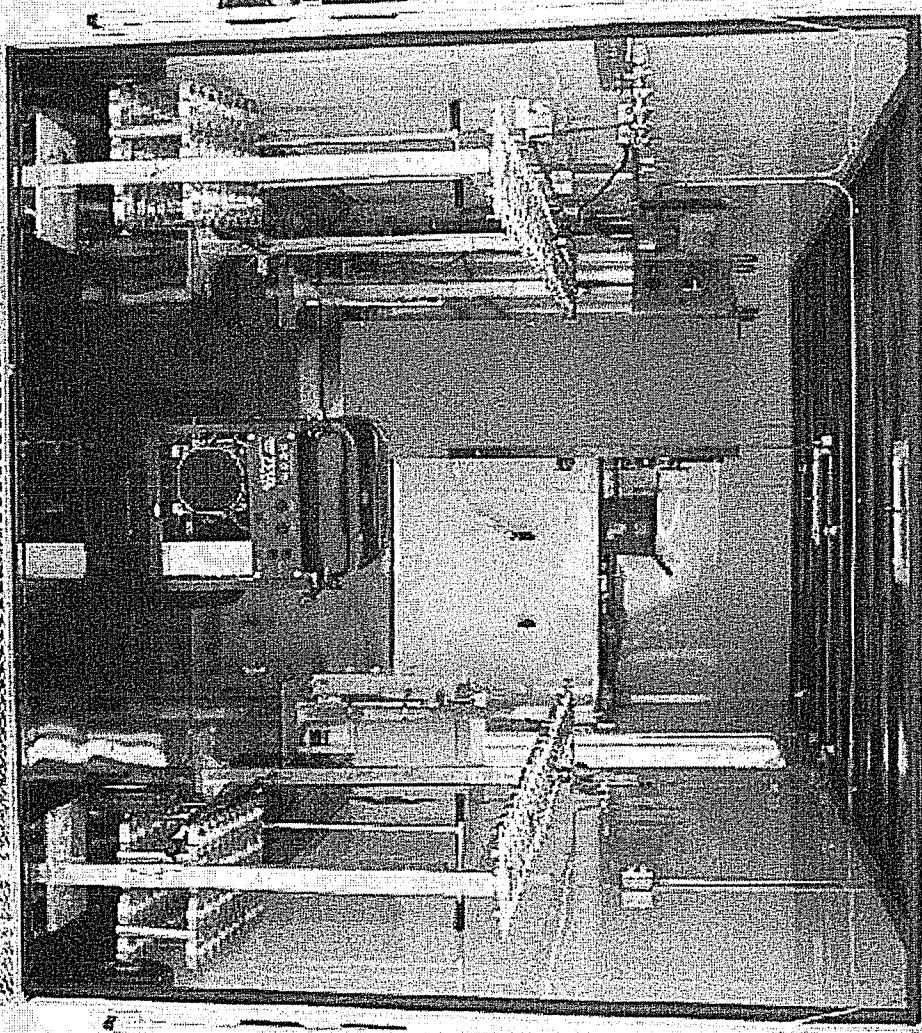
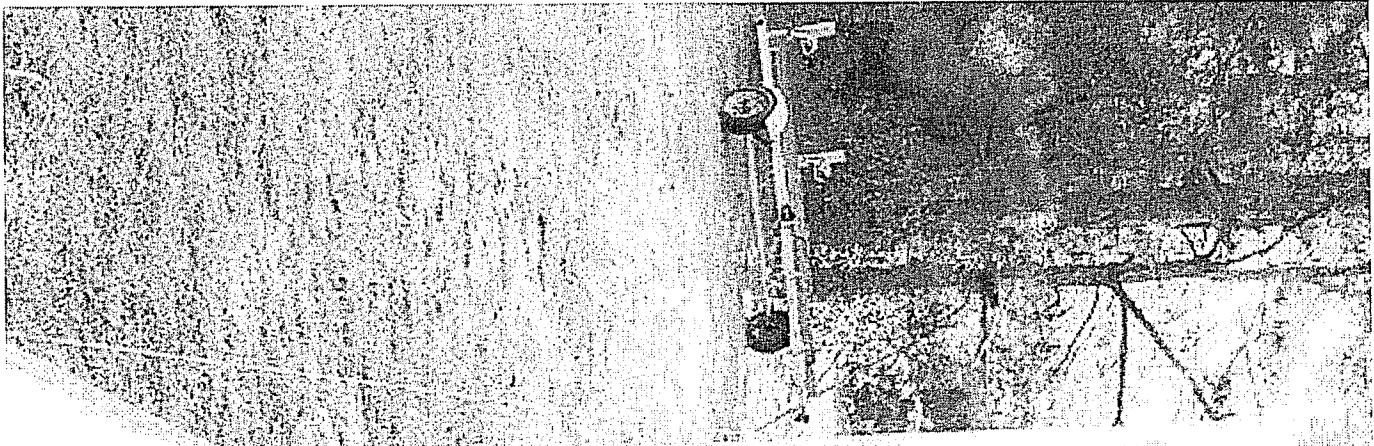
Hoping to help you resolve your problems.

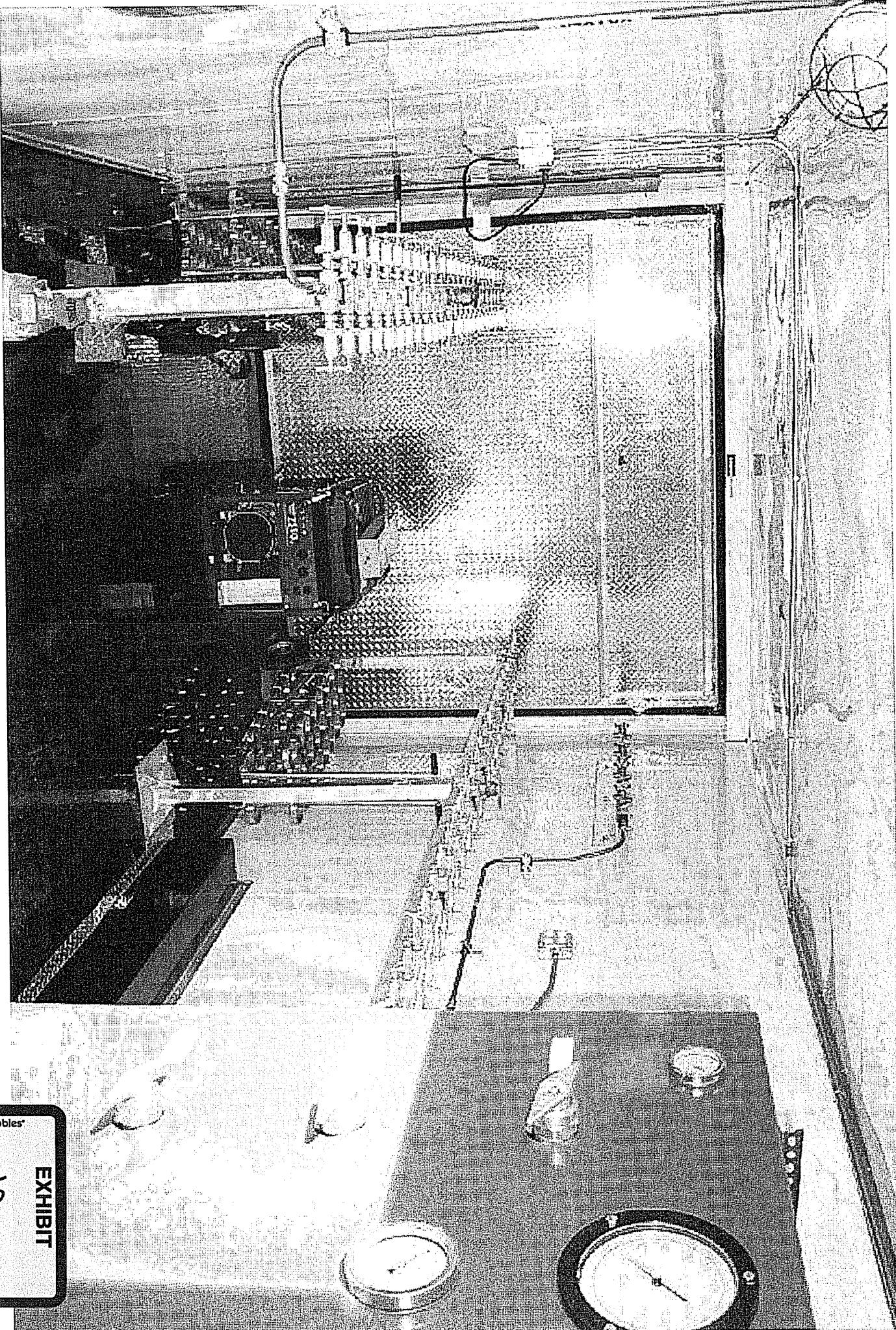
Thanks, John Melvin, cell 228 313-3380

EXHIBIT

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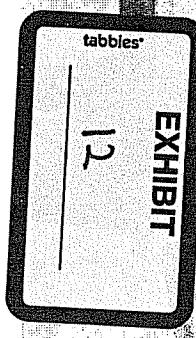
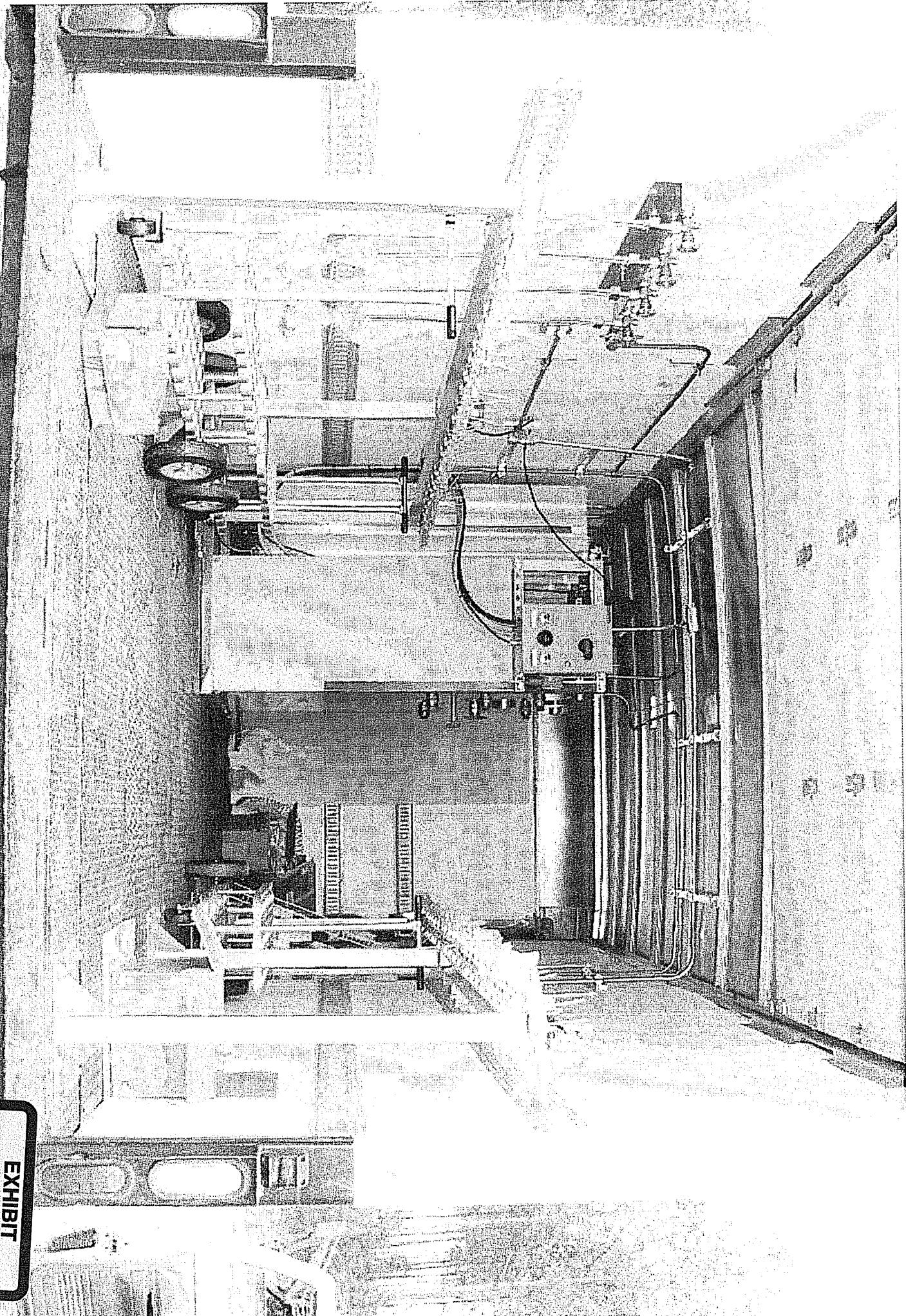


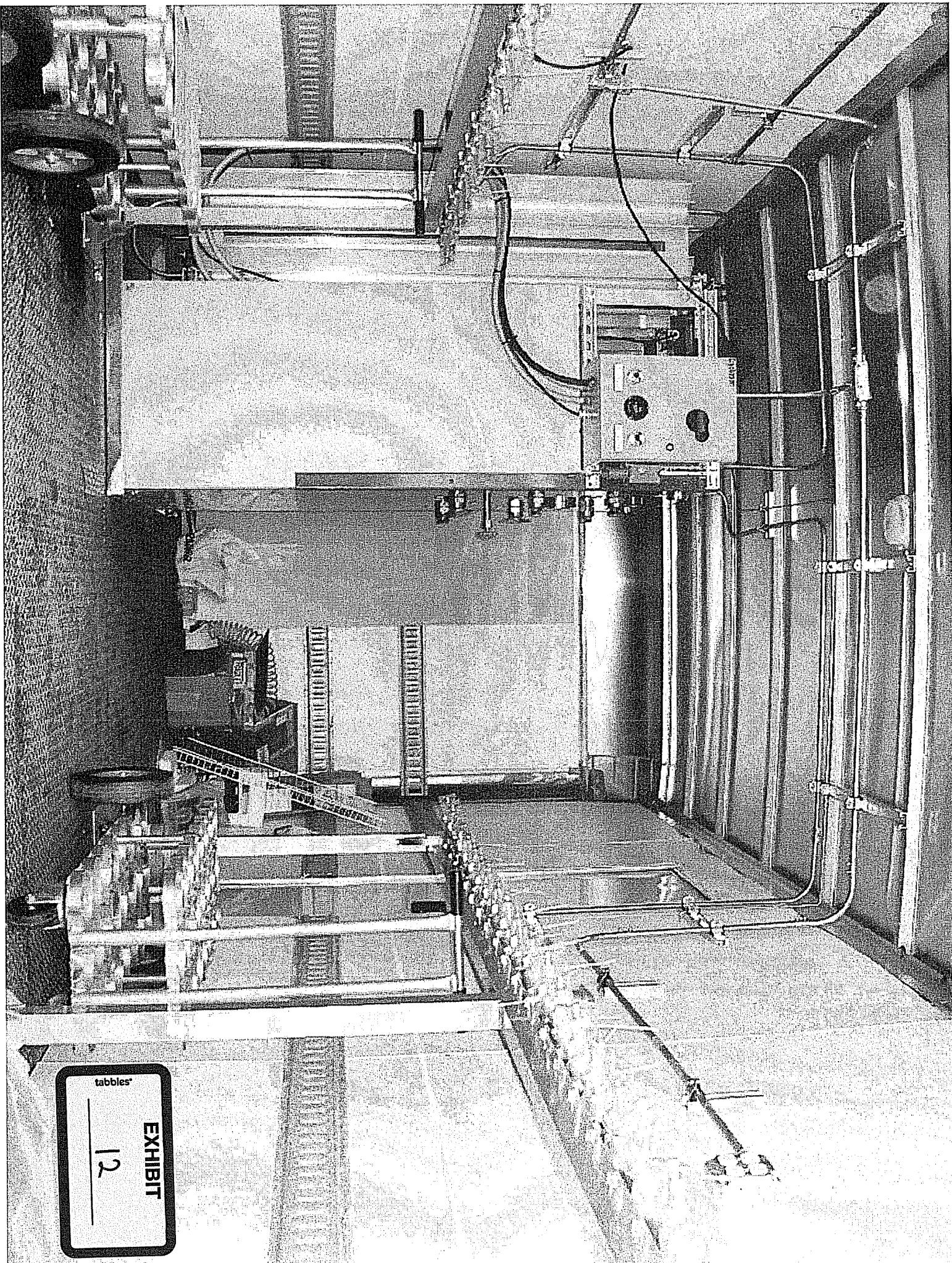


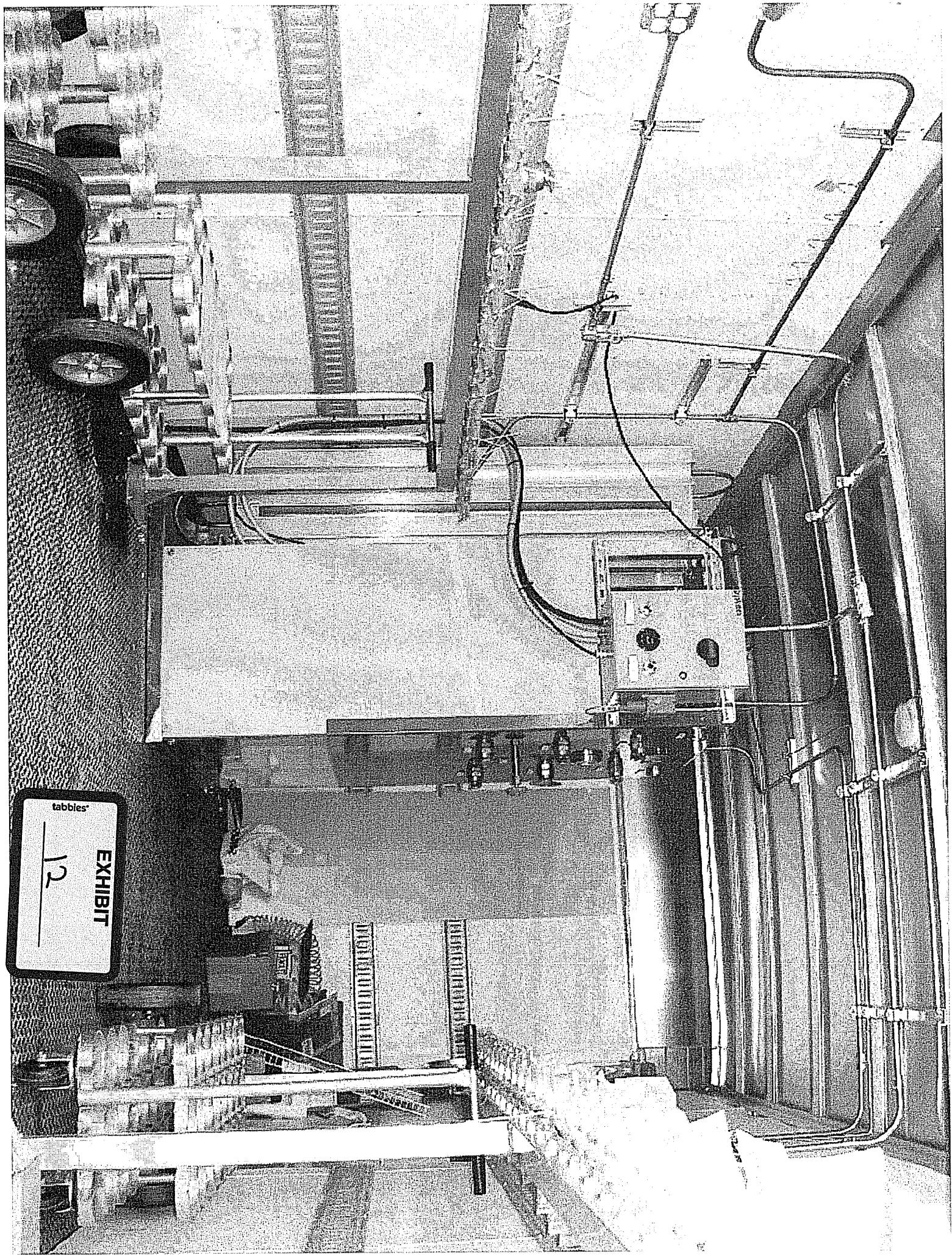
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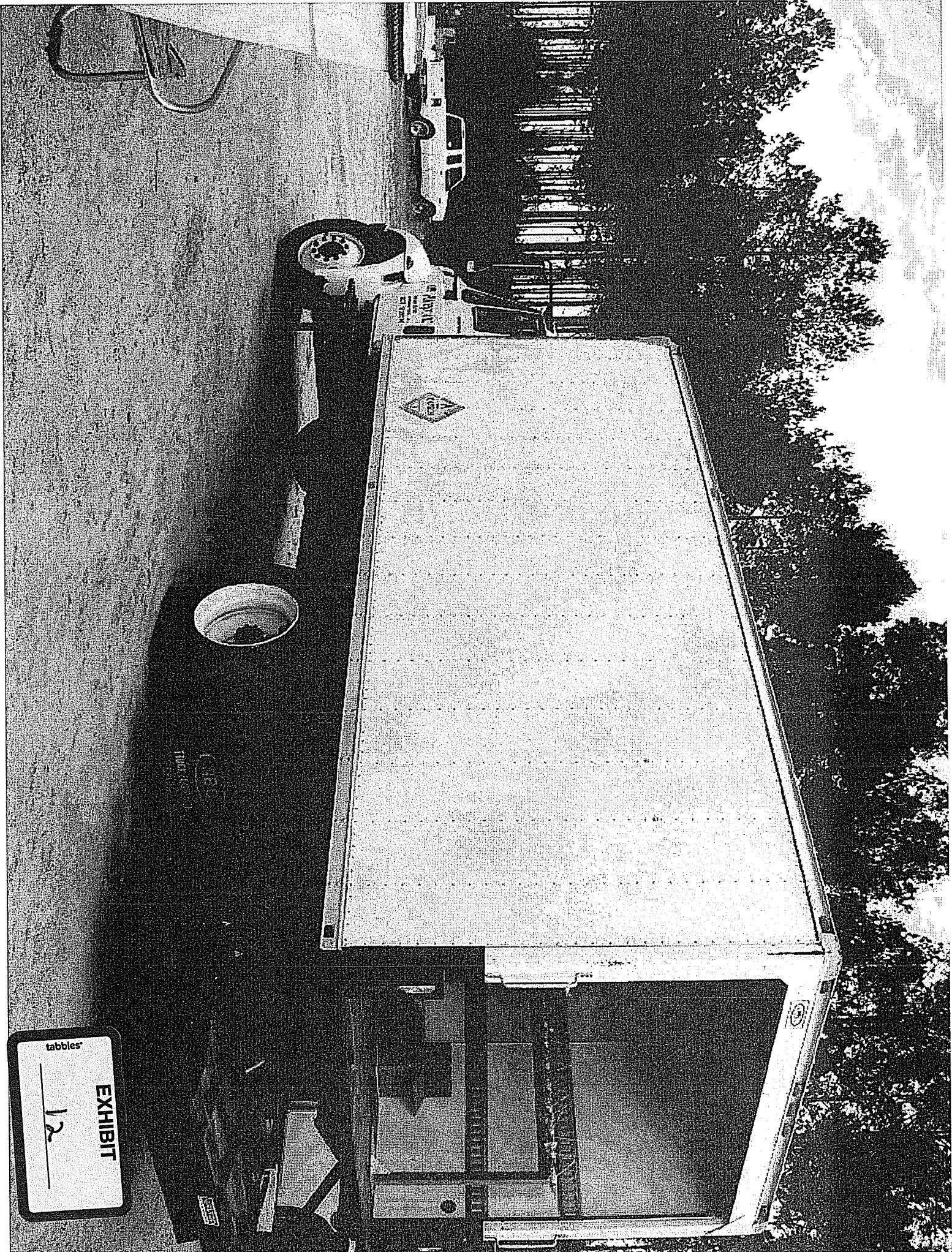
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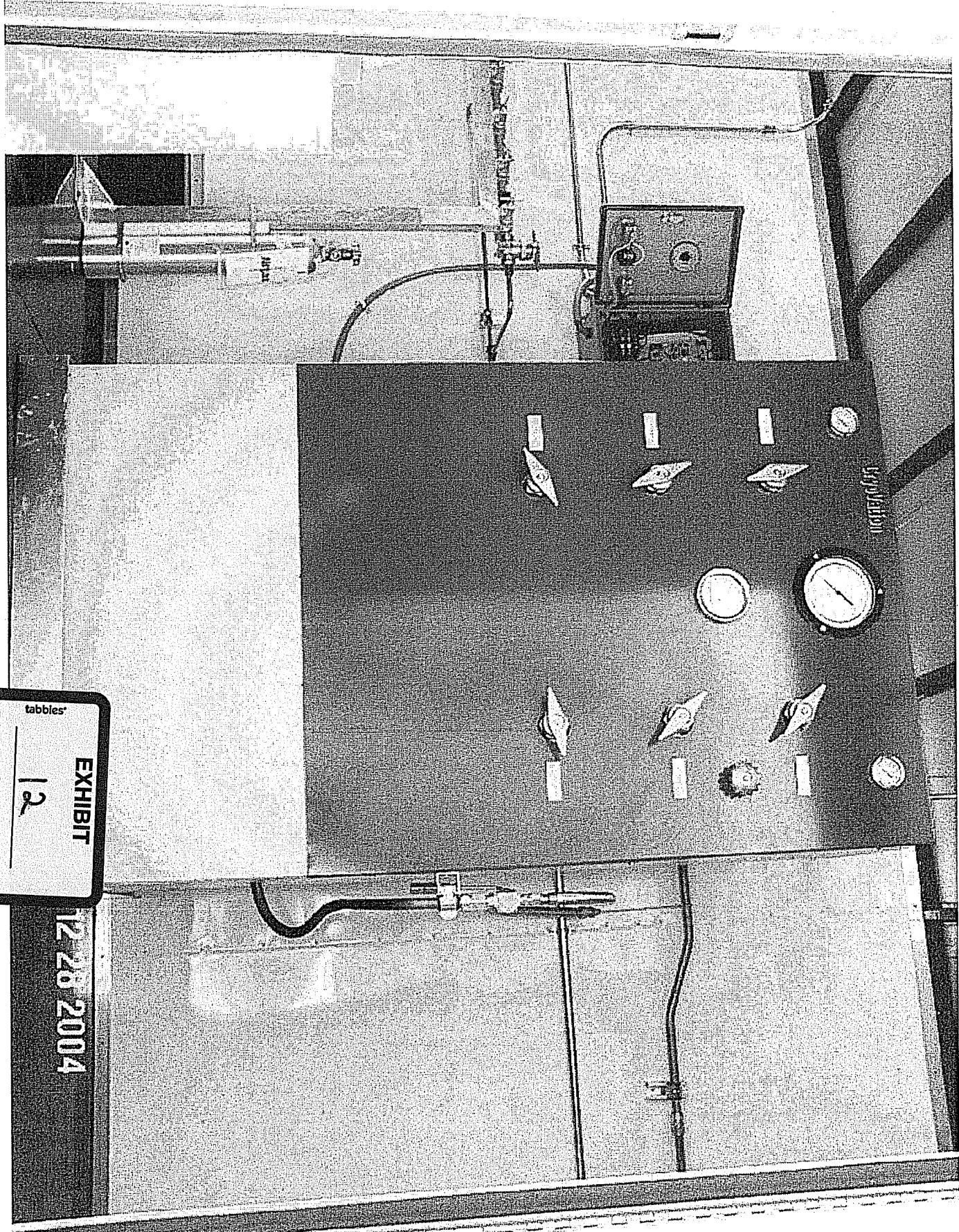
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12/26/2004

12

From: Kenneth Alexander [mailto:kalexander@lhaonline.org]
Sent: Thursday, April 16, 2009 3:30 PM
To: jemelvin@cableone.net
Subject: Re: Mobile oxygen transfilling

John, I am travelling most of the month and haven't had the discussions on my end yet. Thanks for the follow up. The dust will settle in a couple of weeks where I can concentrate some time.

We're working through the issue thanks again and let's stay in touch.

Thanks,
Ken

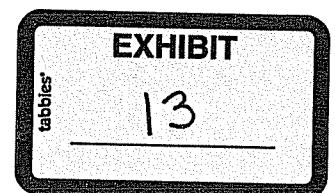
Ken Alexander, VP Quality & Regulatory Activities
Louisiana Hospital Association
225-928-0026

----- Original Message -----

From: John Melvin <jemelvin@cableone.net>
To: Kenneth Alexander
Sent: Thu Apr 16 15:24:48 2009
Subject: FW: Mobile oxygen transfilling

Ken, I haven't heard anything from you and just thought I would touch base and see if there is anything I can do for you. Do you have any questions that pertain to the process? If I can possibly help you in the oxygen Transfilling process please contact me.

John Melvin, Ph 228 313 3380





Parish of Ascension

OFFICE OF THE PARISH PRESIDENT

TOMMY MARTINEZ
Parish President

CEDRIC S. GRANT
Chief Administrative Officer

Ascension Parish rolls out new vehicle to assist oxygen-dependent residents in times of emergency

Contact: Scott Rabalais (225) 621-5753; sralais@apgov.us
FOR IMMEDIATE RELEASE: Aug. 28, 2009

GONZALES – In an effort to better serve its oxygen-dependent citizens, Ascension Parish has acquired a mobile ~~oxygen~~ supply unit for use in times of emergency.

The mobile unit was unveiled Friday, Aug. 28 at the Ascension Parish Office of Homeland Security and Emergency Preparedness at the Parish Courthouse Annex in Gonzales.

According to Richard Webre, director of the Ascension Parish OHS&EP office, Ascension is the first parish in the state to acquire its own mobile oxygen unit. It is similar to one owned by the state of Louisiana.

"We hope this unit won't have to be used any time soon," said Ascension Parish President Tommy Martinez. "But the next time we have a major emergency in Ascension Parish, we will be prepared. This is another example of how we are better equipped to deal with public emergencies in our Parish than ever before."

The trailer, which cost \$55,799, was acquired through a federal grant coming from the 2008 Urban Area Security Initiative (UASI). It holds 10 storage cylinders, which can fill 250 to 300 personal oxygen tanks at a time. The trailer runs off outside electricity or its own self-contained generator.

During times of emergency, such as after a hurricane or major power outage, the mobile oxygen unit will be deployed to a pre-determined location within Ascension Parish. Residents will bring their own personal oxygen tanks, complete a short form and have their tanks refilled at no charge.

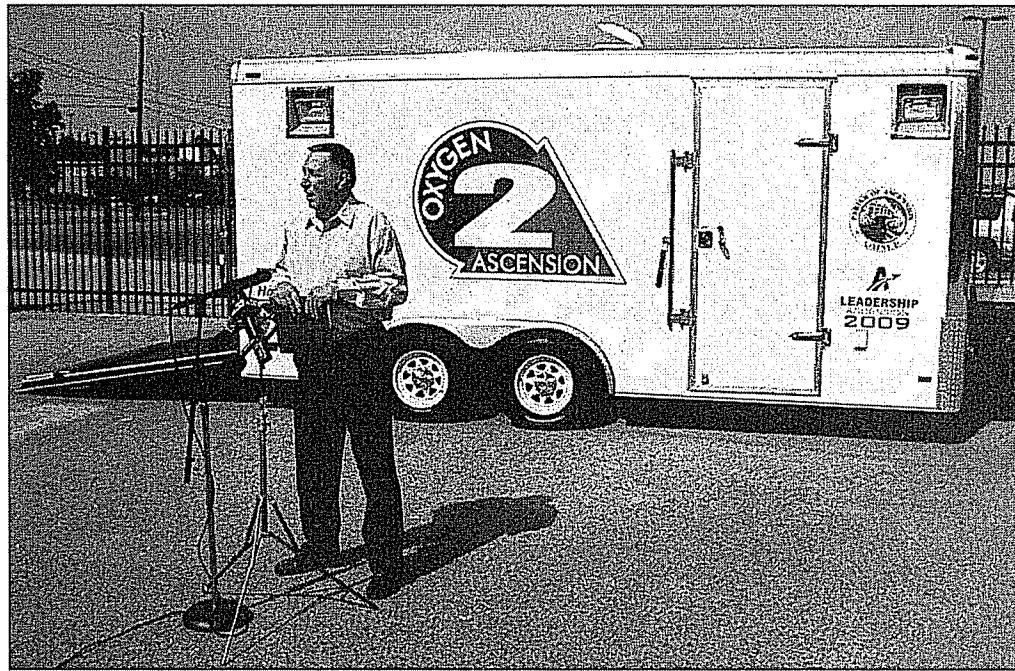
The trailer, which is 16 feet long by eight feet wide and weighs approximately 6,000 pounds, was the brainchild of local business and community leaders working together on the Leadership Ascension 2009 project through the Ascension Chamber of Commerce.

"After Hurricane Gustav, we realized there was a need," Webre said. "With this vehicle we hope to reduce the demand on our hospitals during an emergency."

For more information, contact the Ascension Parish Office of Homeland Security and Emergency Preparedness at (225) 621-8360.

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14 A

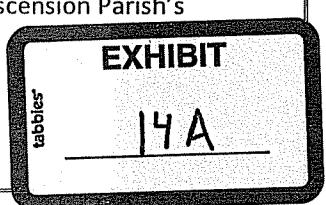


Parish President Tommy Martinez addresses the media Aug. 28 at the unveiling of Ascension Parish's new Mobile Oxygen Unit.



Dr. Bernard Brach, a Pulmonologist with St. Elizabeth's Hospital, addresses the benefits of Ascension Parish's new Mobile Oxygen Unit at its Aug. 28 unveiling.

P. O. Box 1659, 208 E. Railroad Ave., Gonzales, Louisiana 70707
Telephone (225) 621-5709 Fax (225) 621-5704 – E-Mail www.ascensionparish.net





Rick Webre, director of the Ascension Parish Office of Homeland Security and Emergency Preparedness, with the parish's new Mobile Oxygen Unit.



Side view of Ascension Parish's new Mobile Oxygen Unit. A self-contained generator at the front will allow the unit to aid oxygen-dependent residents even without external power.

EXHIBIT

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14 A



Rear view of Ascension Parish's new Mobile Oxygen Unit.

EXHIBIT

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14A

Ascension first in state with oxygen trailer



By Wade McIntyre

Ascension Office of Homeland Security and Emergency Preparedness Director Richard Webre, right, shows off the department's new oxygen supply trailer Friday at the OHSEP in Gonzales. Looking on at left is Dr. Bernard Brock, a pulmonary specialist at St. Elizabeth Hospital.

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By Wade McIntyre

Weekly Citizen

Fri Aug 28, 2009, 06:11 PM CDT

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Ascension Parish officials Friday rolled out a new vehicle to assist residents dependent upon a steady supply of oxygen during times of emergency.

The \$55,799 oxygen supply trailer can be deployed anywhere in the parish during power outages, providing those who need oxygen for health reasons a means to refill their tanks.

In the aftermath of Hurricane Gustav when much of the parish was without electricity for days, the need for the unit was apparent.

"This is going to fill that gap," parish Office of Homeland Security and Emergency Preparedness Director Richard Webre said, standing before the 16-foot long and 8-foot wide trailer that runs off either electricity or its own self-contained generator.

The trailer holds ten oxygen storage cylinders and can fill anywhere from 250 to 300 personal oxygen tanks at a time. Crystal Moran of the OHSEP office said ten additional cylinders will be kept on hand for replacements as needed.

Moran was part of the award-winning Ascension Parish Chamber of Commerce Leadership Ascension team that zeroed in on the need identified by OHSEP and came up the idea for the trailer as its project.

A grant was secured from the 2008 Urban Area Security Initiative to fund the trailer.

The unit is the first of its kind to be operated by a parish in Louisiana, Parish President Tommy Martinez said.

The trailer was built by Hypres Equipment Company in Oklahoma City, and is similar to a unit owned and operated by the state of Louisiana.

He called the acquisition of the trailer "exciting," and said it would serve parish citizens in any type of emergency.

In the Gustav aftermath, firefighters took oxygen to residents in need. With the oxygen trailer available, the firefighters will be freed up for more critical and demanding duties.

The unit also has the potential to reduce demand on area hospitals during emergencies by making it easy for those in need to refill their tanks.

"This system is a godsend," said pulmonary specialist Dr. Bernard Brock of St. Elizabeth Hospital. "This is a unit that will take the pressure off doctors and patients."

To participate in the free oxygen refilling program, residents need to bring their own personal oxygen tanks to the trailer and fill out a short questionnaire. They can then have their tanks refilled at no charge. The parish does not supply personal oxygen tanks.

For more information, residents should contact the Ascension Parish OHSEP at 225-621-8360.

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Ascension unveils oxygen supply trailer

Posted: Aug 28, 2009 5:44 PM CDT

Updated: Sep 07, 2009 6:41 AM CDT

By Cheryl Mercedes - bio | email

GONZALES, LA (WAFB) - Ascension is the first Louisiana parish to have its own oxygen supply trailer. The 6,000 lb. unit made its debut Friday morning at the Ascension Parish Office of Homeland Security and Emergency Preparedness.

Local businesses and parish leaders worked together to get the trailer for emergency situations.

Officials say last year during Hurricane Gustav, hospitals were packed with patients looking for oxygen.

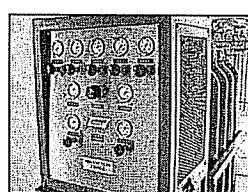
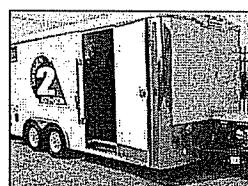
The trailer holds ten storage cylinders and can fill 250 to 300 personal oxygen tanks at a time.

"This system is a godsend," said Dr. Bernard Brach of St. Elizabeth's Hospital. "It represents a unit that will take the pressure off physicians when it comes to patients' needs."

During a disaster, patients would be required to fill out a short form before having their tanks filled. It will cost residents nothing.

The system cost \$55,799. It was paid for by a federal grant.

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